cularly in view of the fact that there was no defence to the plaintiff's claim in this action, I refused the application for a transfer to the Magistrate's Court because in my view that would have been tantamount to an abuse of process. Furthermore I gave judgment to the plaintiff for the sum of $10,000 sued as the defendants do not dispute they owe this money.

I reserved judgment on the question of interest and costs. As for the former it is well established "that in all cases where, in the opinion of the Court, the payment of a just debt has been improperly withheld and it seems to be fair and equitable that the party in default should make compensation by payment of interest, it is incumbent upon the Court to allow interest for such time and at such rate as the Court may think right" (*Toronto Railway Co.* v. *Corporation of the City of Toronto*[2]) – and see *Stroud's* Judicial Dictionary (4th Edition) – Volume 3 page 1400. This is a case where there is every indication that the defendant wrongfully withheld the plaintiffs' money and I feel constrained to award them interest from the date on which the cause of action arose. This interest I award at the rate of 8% per annum on $22,000 from June 4, 1983 up to February 4, 1985 and on $36,000 at 8% from June 4, 1983 to July 4, 1983 and on $14,000 at 8% from June 4, 1983 to August 4, 1984. Since the law precludes the granting of interest upon interest the plaintiff will also have interest on the judgment debt of $10,000 as from February 4, 1985 until realisation.

Costs have always been in the discretion of the Courts. In view of the apparent absence of previous local guidance on this matter and the various other authorities which have been cited by the plaintiffs' counsel appear which to justify the cause of action they adopt in filing this matter in the High Court, I hold that their action in continuing with the proceedings here was not unjustified. It was perfectly open to the defendants to pay up the balance of the claim, which they do not deny was due, immediately after this action was filed but the matter has gone on since then and they must bear the responsibility.

I have therefore given judgment accordingly.

Order accordingly.

Solicitors: *L.M. Ong & Co.; C.C. Aiyathurai & Co.*

DOREEN TAN YING YING v. CHONG TET ON

[O.C.J. (Vohrah J.) June 27, 1985]

[Kuala Lumpur – Civil Suit No. F. 177 of 1984]

Strata Title – Condominium – Parking bay in – Whether sale of parking bay independently of apartment permitted by law – Strata Titles Act 1985, ss. 42 & 69.

Practice & Procedure – Injunction to restrain defendant from dealing with parking bay in condominium pending suit – Court allowing status quo to remain until trial on balance of convenience.

This was an application by the plaintiff for an injunction to restrain the defendant and his agents from dealing with or using a parking bay in a condominium pending the disposal of the suit.

The plaintiff purchased 2 apartments, No. 10B-4 (5-10A) and No. 9D(f-9A) from Realty Development Corporation of Malaysia Sdn. Bhd. (the Development Corporation) in October 1979. Subsequently, she purported to purchase parking bay L. 17 from the Development Corporation in March 1982. Marked over this parking bay were the figures "5-10A". In September 1983, the plaintiff sold apartment No. 10B-4 (5-10A) to the defendant by way of a deed of assignment. A letter from the Development Corporation confirmed that the plaintiff had purchased the parking bay separately from the two apartments she bought originally. The plaintiff contended that she sold the apartment to the defendant independently of the parking bay but the defendant claimed that the plaintiff's agent had indicated prior to the sale that the parking bay "belonged to the said apartment" he was purchasing.

The only issue before the court was whether the Development Corporation was in law permitted to sell a parking bay independently of an apartment.

Held: (1) having regard to sections 42 and 69 of the Strata Titles Act 1985 the Development Corporation was not in law permitted to sell the parking bay as a separate entity.

(2) even if this was a wrong conclusion as a matter of law, on a balance of convenience the *status quo* should remain until the trial.

CIVIL SUIT.

V. Doshi for the plaintiff/applicant.
J. Fam for the defendant/respondent.

Cur. Adv. Vult.

Vohrah J. : This was an application by the plaintiff for an injunction to restrain the defendant and his agents from dealing with or using a parking bay in a condominium pending the disposal of the suit. It first came up for hearing on October 10, 1984 when I made an order dismissing the application with costs. On an application under Order 56

rule 2 of the Rules of the High Court 1980 by the plaintiff, I heard further arguments in open court on June 4, 1985 and confirmed the order I had made.

The facts of the case as far as this application was concerned were as follows. The plaintiff on October 26, 1979 purchased from Realty Development Corporation of Malaysia Sdn. Bhd. ("the Development Corporation") two apartments identified as apartment No. 10B-4 (*5-10A*) and apartment No. 9D-4(*5-9A*). On March 23, 1982 the plaintiff purported to purchase parking bay L. 17 from the Development Corporation. Marked over this parking bay were the figures "5-10A". On September 12, 1983 the plaintiff sold apartment No. 10B-4(*5-10A*) to the defendant by way of a deed of assignment. A letter dated May 4, 1984 from the Development Corporation (see Exh. LES-1, Encl. 3) confirmed that the plaintiff had purchased the parking bay separately from the two apartments she bought originally.

The plaintiff contended that she sold the apartment to the defendant independently of the parking bay but the defendant denied this and deposed that the plaintiff's agent had indicated to him prior to the sale that the parking bay "belonged to the said apartment" he was purchasing. This was a question of fact which could not be resolved by affidavit evidence. It was, however, the contention of counsel for the defendant that the parking bay formed part of common property and therefore could not be sold as a separate entity.

By consent of both counsel, the only issue I had to decide was whether the Development Corporation was in law permitted to sell a parking bay independently of an apartment. It was also agreed by both counsel that the provisions of the recently enacted Strata Titles Act 1985 which came into force on June 1, 1985 were to apply. In order to answer the agreed issue posed, I had to decide whether in the light of the provisions of the Act the sale of the parking bay as a separate entity by the Development Corporation, that is independently of either of the two apartments was valid or not. Counsel for the plaintiff whilst admitting that the parking bay was an accessory parcel contended that a sale and purchase agreement by its very nature conferred a right to the Development Corporation to sell the parking bay. I found this argument difficult to follow and took the view, having regard to the specific provisions of section 42 and section 69 of the Act, that the Development Corporation was not in law permitted to sell the parking bay as a separate entity as it purported to do in this case.

I was also of the view that, even if I was wrong in this conclusion as a matter of law, on a balance of convenience the *status quo* should remain until the trial of the suit for the following reasons.

First, the photograph exhibited as 'CTO-1' to the defendant's affidavit clearly showed that the parking bay was reserved for apartment No. 10B-4 (*5-10A*). This fact was confirmed by page 2 of the document marked as 'CTO-2' from the Development Corporation exhibited to the same affidavit. Secondly, page 1 of the same document showed that the plaintiff who retained apartment No.9D-4 (*5-9A*) was a "non-purchaser" of any parking bay in relation to that apartment. Thirdly, the plaintiff herself (see para. 7 of Encl. 3) admitted that the defendant had after the execution of the deed of assignment on September 12, 1983 been using parking bay L.17 obviously in the *bona fide* belief that the parking bay L.17 was appurtenant to his apartment No. 10B-4 (*5-10A*).

Application dismissed

Solicitors: *Azman, Davidson & Co.; A.K. Lee & Co.*

PUBLIC PROSECUTOR v. WEE MEE INDUSTRIES CO. SDN. BHD.

[A. Cr. J. (Tan Chiaw Thong J.) November 9, 1985]

[Kuching – Criminal Appeal No. KG 2 of 1984]

Criminal Law and Procedure – False trade description – Halal – Hukum Syarak – Edible vegetable oil – Soup powder containing animal fat – Trade Descriptions (Use of Expression "Halal") Order, 1975 – Trade Descriptions Act, 1972, ss. 3(1)(a), 18 & 19.

Trade Description – Food – False description "Edible Vegetable Oil" when in fact "animal fat" was one of ingredients – Trade Descriptions Act, 1972 (Act 87), ss. 3(1)(a), 18 & 19.

In this case the respondent was charged (a) that he applied a false trade description *to wit* "halal" on packets of instant noodles whereas they were not; (b) that he applied a false trade description namely "Edible vegetable oil" on packets of instant noodles whereas in fact the soup powder contained animal fat and thereby committed offences under the Trade Descriptions Act, 1972.